

COMMONWEALTH OF MASSACHUSETTS

**DEPARTMENT OF
INDUSTRIAL ACCIDENTS**

BOARD NO. 011589-02

Miguel Hernandez
Everett Truck Repair Co.
Ace American Insurance Co.

Employee
Employer
Insurer

REVIEWING BOARD DECISION

(Judges Fabricant, McCarthy and Costigan)

APPEARANCES

Paul F. Murphy, Esq., for the employee
Charles C. Donoghue, Esq., for the insurer

FABRICANT, J. The insurer appeals from a decision awarding the employee benefits for an accepted crush injury to his left hand. The insurer argues that the judge's finding of a causal relationship between the hand injury and the employee's left medial epicondylitis (elbow pain) was unsupported by the medical evidence. We agree, reverse the decision in part, and recommit the case for further findings on the extent of disability.

The §11A report of the impartial physician diagnoses a causally related laceration of the left hand, fracture of the second metacarpal with trigger finger, and tenosynovitis of the long finger of the left hand. The doctor opined that the trigger finger and tenosynovitis were disabling, and that the employee had a sedentary work capacity. However, he did not comment on the employee's epicondylitis. (Dec. 35.)

Finding the impartial report inadequate, the judge allowed additional medical evidence. The employee submitted notes from his treating orthopedic doctor, John Jiuliano, M.D., diagnosing a chronic left elbow distal biceps tendonitis, and mild, chronic left elbow epicondylitis. The employee also submitted the deposition testimony of Jesse Jupiter, M.D., an upper extremity

specialist who diagnosed the employee with left medial epicondylitis. (Dec. 36-37.)

Relying on the opinions of Dr. Jiuliano and the impartial physician, the judge concluded that the employee's trigger finger, tenosynovitis and chronic epicondylitis were causally related to his April 3, 2002 crush injury at work. (Dec. 37.) The judge specifically adopted a statement from Dr. Jiuliano's November 5, 2003 report that the employee suffered from left arm pain and swelling "for which he sustained an injury approximately 15 to 16 months ago." (Dec. 38.)

The insurer argues that there is no adequate basis for the judge's conclusion that the employee's epicondylitis was caused by the work injury. We agree. While Dr. Jupiter offered a diagnosis of left medial epicondylitis, he did not offer an opinion on causal relationship. (Dec. 36-37.) The judge instead purported to rely on Dr. Jiuliano's note, stating, "The patient also complains about left arm proximal swelling and pain with supination, and biceps activity of the left arm, for [sic] which he sustained an injury 15 to 16 months ago." (Ex. 11.) We agree with the insurer that this statement is insufficient to support a finding of a causal relationship between the work injury ("15 to 16 months ago") and the elbow condition. The doctor's statement is merely a recounting of the employee's narration of his history at the examination; the doctor is not expressing a medical opinion of his own. Even if the statement were rightly attributable to the doctor, it is still only a statement of coincidence, not causation. It is akin to a temporal causal relationship opinion of the sort we consider insufficient to establish causal connection. See, e.g., Allie v. Quincy Hosp., 12 Mass. Workers' Comp. Rep. 167 (1997).

Therefore, we reverse the judge's finding of causal relationship between the work injury and the epicondylitis. Since the judge's disability assessment necessarily took this elbow impairment into account, we must recommit the case

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for further findings on extent of disability, absent the condition of the left elbow.

So ordered.

Bernard W. Fabricant
Administrative Law Judge

William A. McCarthy
Administrative Law Judge

Patricia A. Costigan
Administrative Law Judge

Filed: May 8, 2006